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Item 6
Bill 2

BY FAX: 768-3827

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Agency: Public Safety and Services Committee of the City Council of the City and County of Honolulu
 Hearing Date/Time: Thursday, March 5, 2009, 1:00 p.m.
 Place: Committee Meeting Room
 Re: Testimony of the ACLU of Hawaii in Opposition to Bill 2, CD1 (2009), Relating to Public Parks

Dear Chair Dela Cruz and Members of the Public Safety and Services Committee:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to Bill 2, CD1, which would change the definition of camping for Kapiolani Park. While we are sensitive to the community's safety concerns, this bill is not the answer: it is bad public policy, it is fraught with constitutional deficiencies, and it is certain to invite legal challenges.

- **Bill 2 is simply bad public policy: it fails to address the underlying causes of homelessness and does not appropriately respond to the public safety issues at hand.**

Making homelessness a crime will only exacerbate the problem: punitive actions like Bill 2 only make the lives of homeless individuals more difficult by moving them away from services, turning them into criminals (just for engaging in life-sustaining activities in public), and giving them a criminal record - making it more difficult for them to obtain employment and housing. Rather than passing punitive measures like Bill 2, the Council should look at constructive alternatives to combating the underlying causes of homelessness.

Further, as proposed by constituents, the Committee should consider investing its limited time and resources in providing proven and effective public safety programs, like community policing, improved lighting, and increased foot patrols.¹ Having a police officer standing by the restrooms, installing better lighting, and promoting efforts like the Waikiki Citizen Patrol are far better deterrents than passing a law making it illegal to sleep in a park.

- **Bill 2 is fraught with constitutional deficiencies and certain to invite legal challenges.**

Second, the amended definition in Bill 2 is unconstitutionally vague and does not comply with the Supreme Court of Hawaii's decision in *State v. Beltran*, 116 Hawaii 146 (2007). As the language in the ordinance in *Beltran* was found unconstitutional, there is absolutely no way that

¹ Honolulu City Council Committee on Public Health, Safety and Welfare, *Testimony of Kapiolani Park Advisory Council in support of Bills 42 and 43, 2008* (June 26, 2008).

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Chair Dela Cruz, Public Safety and Services Committee
and Members Thereof
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the current language will satisfy the court's requirements. As such, the bill will leave the County vulnerable to repeated constitutional challenges.

In sum, the ACLU respectfully requests that the Committee defer this measure.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,



Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii